

Decision **DRAFT DECISION OF ALJ GALVIN** (Mailed 3/15/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Establish Its Authorized Rates of Return on Common Equity for Electric Utility Operations and Gas Distribution for Test Year 2003. (U 39 M)

Application 02-05-022
(Filed May 8, 2002; Motion
filed January 28, 2004)

**FINAL OPINION ON MOTION FOR AUTHORITY TO WAIVE
TEST YEAR 2005 COST OF CAPITAL APPLICATION**

Summary

This decision exempts Pacific Gas and Electric Company (PG&E) from filing a test year 2005 cost of capital (COC) application to the extent that PG&E completes its post-bankruptcy financing by June 15, 2004. This exemption is granted to avoid an inefficient use of Commission and PG&E resources through an overlapping review and analysis of PG&E's post bankruptcy COC with PG&E's test year 2005 COC.

Background

Decision (D.) 89-01-040 established a procedure for PG&E to file an annual COC application on May 8 each year for the following test year. Consistent with this requirement, PG&E filed a test year 2003 COC application on May 8, 2002.

By D.02-11-027, dated November 7, 2002, PG&E was authorized an interim 11.22% COC for its test year 2003 based on a capital structure of 46.20% long-term debt, 5.80% preferred stock and, 40.00% common stock. That COC was

authorized on an interim basis because PG&E was in the process of substantially changing its capital structure through a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California (Bankruptcy Court), Case No. 01-30923 DM. That decision also required PG&E to true up its COC and capital structure within 30 days after completion of financing contemplated by a plan of reorganization approved by the Bankruptcy Court.

By D.03-05-047, dated May 22, 2003, the Commission exempted PG&E from filing a May 8, 2003 application for its test year 2004 COC. That exemption was granted to avoid an inefficient use of Commission and PG&E resources through an overlapping review and analysis of PG&E's post bankruptcy COC with PG&E's test year 2004 COC.

On December 18, 2003, the Commission adopted a modified settlement agreement, as set forth in D.03-12-035. On December 19, 2003, the Commission entered into the modified settlement agreement with PG&E and PG&E Corp., and agreed to jointly support a plan of reorganization for PG&E, the Settlement Plan. The Bankruptcy Court signed an order confirming the Settlement Plan on December 22, 2003. By D.04-01-024, dated January 8, 2004, the Commission authorized PG&E, with the concurrence of the Commission Financing Team, to arrange for and issue securities and other long-term debt up to \$10 billion and to enter into working capital and credit facilities up to \$2.5 billion to finance the Settlement Plan.¹

¹ Previously, in D.02-11-030, the Commission conditionally authorized PG&E to issue up to \$9.5 billion of additional preferred stock and long-term debt negotiated and placed by the Commission Financing Team to implement the Commission's and the

Footnote continued on next page

Discussion

PG&E seeks authority to waive the filing of its test year 2005 COC application required by D.89-01-040 on the basis that that application, due on May 8, 2004, and the post bankruptcy COC application, due within 30 days after implementing a Bankruptcy Court approved financing plan, are expected to be filed within a few weeks of each other.

By its February 13, 2004 opposition, the Office of Ratepayer Advocates opposes a waiver of PG&E's test year 2005 COC application on the basis that "no one knows when PG&E will emerge from bankruptcy."

The situation before us today is different than that existing at the time PG&E was granted an exemption from filing a test year 2004 COC application. The Commission has approved the modified settlement agreement, and the Bankruptcy Court has approved a Settlement Plan. PG&E has targeted April 2004 for completion of the implementation of the financing for Settlement Plan. PG&E's updated COC application required by D.02-11-027 is imminent. Thus, to require PG&E to file a test year 2005 COC application at this time would result in an inefficient use of Commission and PG&E resources through an overlapping review and analysis of PG&E's post-bankruptcy COC with PG&E's test year 2005 COC. PG&E's waiver request should be granted. However, if PG&E is unable to complete implementation of the approved financing plan by June 15, 2004, it should file a 2004 COC application for its test year 2005.

Official Committee of Unsecured Creditor's First Amended Plan of Reorganization. By D.03-09-020, that conditional authority was modified to permit PG&E, with the concurrence of the Commission Financing Team, to enter into interest rate hedges for debt to be issued to implement any plan of reorganization approved by the Bankruptcy Court.

Comments on Draft Decision

The administrative law judge's (ALJ) draft decision on this matter was filed and served pursuant to Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Commission's Rules of Practice and Procedure. There were no comments filed on the draft decision.

Assignment of Proceeding

Geoffrey F. Brown and Michael R. Peevey are the Assigned Commissioners and Michael J. Galvin is the assigned ALJ in this proceeding

Findings of Fact

1. D.89-01-040 established a procedure for PG&E to file an annual COC application on May 8 each year for the following test year.
2. D.02-11-027 established an interim return on common equity and return on rate base for PG&E subject to true up 30 days after a financing plan approved by the Bankruptcy Court has been implemented by PG&E.
3. In D.03-12-035, the Commission approved a modified settlement agreement and agreed to jointly support a plan of reorganization for PG&E, the Settlement Plan.
4. The Bankruptcy Court approved the Settlement Plan for PG&E on December 22, 2003.
5. On January 8, 2004, in D.04-01-024, the Commission authorized PG&E, with the concurrence of the Commission Financing Team, to issue securities and other long-term debt and to enter into working capital and credit facilities to finance the Settlement Plan.
6. PG&E is in the process of implementing the Settlement Plan, and expects that financing for the Settlement Plan will be implemented in April 2004.

Conclusion of Law

PG&E's motion should be approved immediately to avoid an overlapping review and analysis of its post bankruptcy COC with its test year 2005 COC. However, if PG&E does not complete implementation of the approved financing plan by June 15, 2004 it shall file a test year 2005 COC application.

FINAL ORDER**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is exempt from filing a test year 2005 cost of capital (COC) application to the extent that it completes implementation of the financing plan approved by the United States Bankruptcy Court for the Northern District of California by June 15, 2004.
2. PG&E shall file a COC application to true up its capital structure and costs within 30 days after it has implemented the approved financing plan, as set forth in Decision 02-11-027. However, if implementation of that financing plan is not completed by June 15, 2004, PG&E shall file a 2005 test year COC application no later than July 15, 2004.
3. Application 02-05-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.